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McDERMOTT, WILL & EMERY

April 17, 2003

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Meeting: Improving Public Safety Communications in the
800 MHz Band, WT Docket No. 02-55

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this is to notify you that Shirley Fujimoto and Jeffrey Sheldon, representing Cinergy Corporation, Consumers Energy Company, Entergy Corporation and Entergy Services, Inc., met yesterday with John Muleta, Catherine Seidel, Shellie Blakeney, Tom Stanley, Jeanne Kowalski, and Michael Wilhelm, of the Wireless Telecommunications Bureau, to discuss the issues in the above-referenced docket.

We discussed the positions advanced by these utility companies in their written comments and reply comments in this proceeding, and as outlined in the attached written presentations used during the meeting.

Marlene H. Dortch
April 17, 2003
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Pursuant to the Commission's Rules, one copy of this notice is being filed electronically with the Commission. If there are any questions concerning this matter, please let me know.

Very truly yours,

[/s/ Shirley S. Fujimoto](#)

Shirley S. Fujimoto

Attachments

cc: John Muleta
Catherine Seidel
Shellie Blakeney
Tom Stanley
Jeanne Kowalski
Michael Wilhelm

In the Matter of
Improving Public Safety Communications in the 800 MHz Band
WT Docket 02-55
April 16, 2003

Positions of Entergy, Cinergy and Consumers Energy

- I. Background
 - A. Entergy, Cinergy and Consumers Energy operate extensive 800 MHz land mobile systems for crew dispatch in support of their delivery of electric service to consumers.
 - B. Utilities are the largest group of licensees impacted by this docket aside from Public Safety licensees.
- II. A Number of Proposals Have Been Raised in the Docket to Provide Both Short and Long Term Relief Without Significant Disruption to Existing Licensees
 - A. Alternate proposals do not preclude rebanding or other approaches if evidence is later developed to justify the cost and disruption of Nextel's irreversible make-or-break plan.
 - B. The Consensus Plan lacks the broad support that Nextel claims and has been challenged by scores of licensees including Public Safety agencies [*see Attachment hereto*].
 - C. There is growing support and consensus for alternative approaches that offer immediate improvement targeted at the problem, with far less disruption and cost. 800 MHz interference is a highly localized phenomenon requiring local solutions.
 - 1. Adopt technical restrictions, assign responsibilities, and establish procedures for avoiding and promptly correcting interference.
 - 2. Adopt rules providing for negotiated relocation and technical measures.
 - D. Position of McDermott's energy utility clients:
 - 1. We support industry efforts to develop an effective approach that does not entail the serious problems with Nextel's Consensus Plan.
 - 2. Appropriate mandatory technical standards, including a pre-coordination obligation, could yield immediate, before-the-fact benefits to the 800 MHz environment.

3. Agree that confirmation of accountability for interference resolution is necessary.
4. We do not support rebanding as a solution, but if rebanding is deemed necessary to address interference:
 - a) Nextel must have an obligation to fund comprehensive relocation of all affected licensees nationwide; setting aside questions of rebanding's effectiveness, a partial relocation will be worse than none;
 - b) Subject to good faith standard and hard obligation to move, relocation should only be pursuant to voluntary negotiations in accordance with the Emerging Technologies model and the "upper 200 SMR" rules (Section 90.699)

III. Nextel's "Consensus Plan" is not an appropriate solution to interference to Public Safety operations at 800 MHz.

- A. The Consensus Plan is enormously disruptive and expensive, with its *proponents* projecting \$850 Million in costs - there is no guarantee that this will cover the required relocation or that there will be funding beyond this amount.
- B. The effectiveness of rebanding is unproven, and is the subject of significant debate.
- C. Licensees in the "guardband" at 859-861 MHz will be subject to increased probability of interference and with reduced rights to object to such interference.
- D. Prohibitions on "cellular" operation below 861 MHz are arbitrary, and will diminish opportunities for utilities and others to develop advanced communications systems.
- E. By its express terms, the Consensus Plan will not offer technical measures or other relief in the near term, and the projected timeframes are extremely optimistic given massive scale and legal questions.
- F. The "Relocation Coordination Committee" is unlawful, and would be vested with too much discretion.